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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,343	04/11/2005	Jacques Mallet	3665-122	3751
23117	7590	03/22/2006	EXAMINER	
NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203			SAJJADI, FEREDOUN GHOTB	
			ART UNIT	PAPER NUMBER
			1633	
DATE MAILED: 03/22/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/511,343	<b>Applicant(s)</b> MALLET ET AL.	
	<b>Examiner</b> Fereydoun G. Sajjadi	<b>Art Unit</b> 1633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 35-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 35-67 are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Claims 35-67 are pending in the application. Claims 1-34 were cancelled and new claims 35-67 added by the preliminary amendment of October 15, 2004.

#### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

A plasmid or recombinant virus, as recited in claim 50. A plasmid and a virus are each structurally and functionally distinct, with distinct technical features, each capable of separate utility. The search and examination of plasmid and virus is not coextensive and would constitute undue burden.

A specific virus, either a replication defective Adeno, AAV, retrovirus or lentivirus, as recited in claim 51. Adeno, AAV, retrovirus and lentivirus are structurally and functionally distinct, having different infectivity and expression profiles. The search and examination of said distinct viruses is not coextensive and would constitute undue burden.

A specific transgene, as recited in claim 52. The growth factor, cytokine, immunoglobulin, etc. are each structurally and functionally distinct, exhibiting different mechanisms of action and each capable of separate use. The search and examination of said transgenes is not coextensive and would constitute undue burden.

A specific human disease, as recited in claim 56. Parkinson, ALS, Huntington's and retinal degenerative disease, are each distinct, having different disease etiologies. The search and examination of said distinct neurodegenerative diseases is not coextensive and would constitute undue burden.

A human or rodent cell, as recited in claim 61. A human and a rodent cell are each distinct, having different structural and physiological features. The search and examination of said distinct human and rodent cell is not coextensive and would constitute undue burden.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Claims 50-52, 56, and 61, and claims dependent therefrom correspond to all the species listed above.

The following claim(s) are generic: 50-52, 56, and 61.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: As the technical features (as for example: plasmid, lentivirus, Parkinson's disease, cytokine and rodent cell) linking the members do not constitute a special technical feature as defined by PCT Rule 13.2, particularly since each of the species does not share a substantially common structural feature or function, the requirement for unity of invention is not fulfilled.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their divergent subject matter, restriction for examination purposes as indicated is proper.

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Thus, it would be unduly burdensome for the examiner to search and examine all the claimed inventions being sought in the pending claims.

Applicant is advised that the reply for this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications regarding the formalities should be directed to Patent Analyst William Phillips, whose telephone number is **(571) 272-0548**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fereydoun G. Sajjadi whose telephone number is **(571) 272-3311**. The examiner can normally be reached Monday through Friday, between 7:00 am-4:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave T. Nguyen can be reached on **(571) 272-0731**. The fax phone number for the organization where this application or proceeding is assigned is **(571) 273-8300**. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

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For all other customer support, please call the USPTO Call Center (UCC) at (800) 786-9199.

Fereydoun G. Sajjadi, Ph.D.  
Examiner, USPTO, AU 1633



**DAVE TRONG NGUYEN**  
**SUPERVISORY PATENT EXAMINER**